2366

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 825. 2366 ~~2366~~ 10.

A. W. CORBUS, APPELLANT,

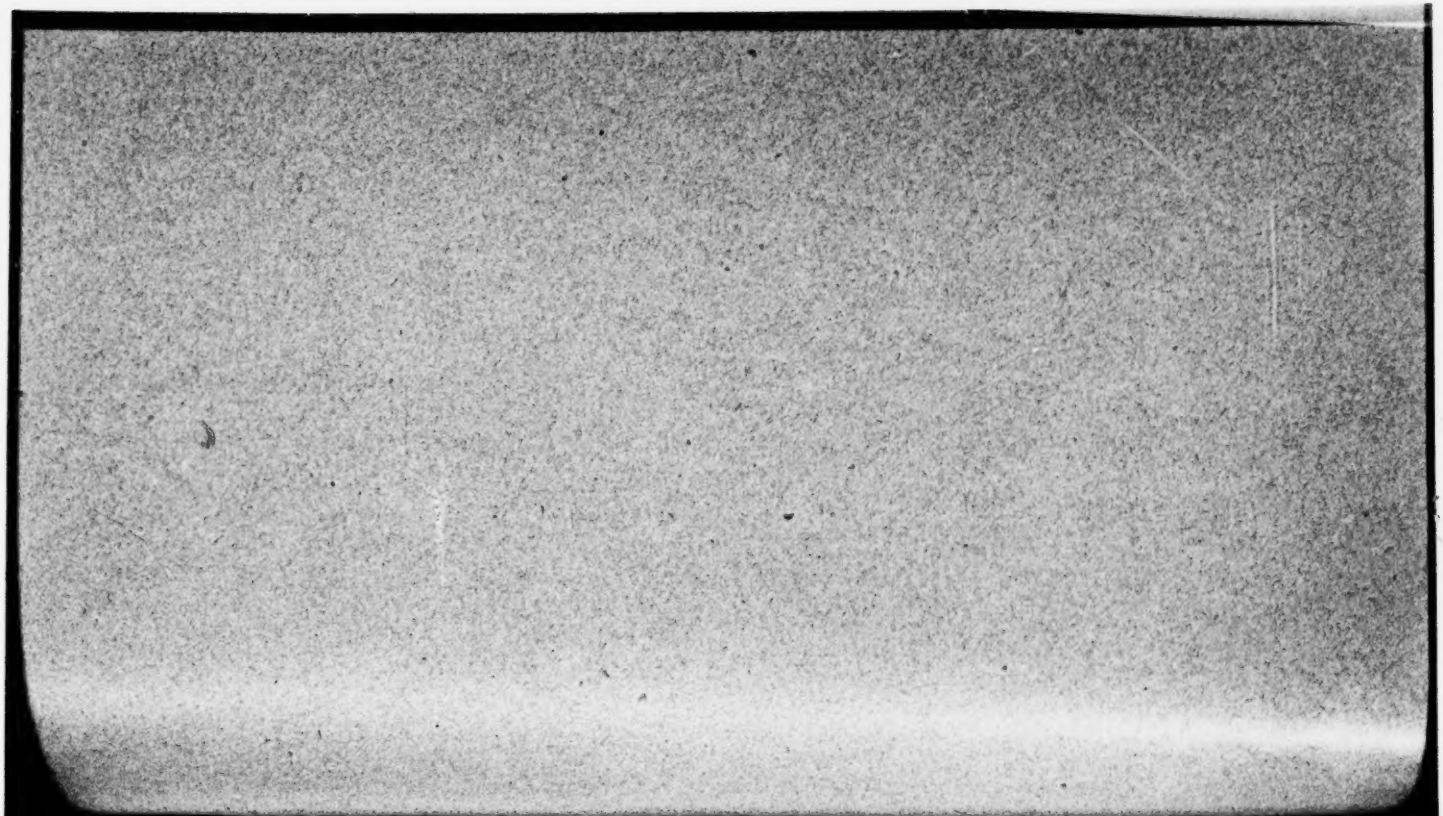
vs.

THE ALASKA TREADWELL GOLD MINING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

FILED MAY 5, 1900.

(17,739.)



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OCTOBER TERM, 1899.

No. 625.

A. W. CORBUS, APPELLANT,

vs.

THE ALASKA TREADWELL GOLD MINING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 9, 1900.

UNITED STATES OF AMERICA, }
District of Alaska. }

eas and proceedings begun and held in a cause in equity at a regular term of the district court of the United States in and for he district of Alaska, at Juneau, Alaska, on the 7th day of November, 1899.

Present: Honorable C. S. Johnson, judge.

the United States District Court in and for the District of Alaska.

A. W. CORBUS }
vs. } In Equity.
E ALASKA-TREADWELL GOLD MINING COMPANY. }

the honorable judge of the United States district court in and or the district of Alaska:

A. W. Corbus, of the district of Alaska and a citizen of the United tes of America, presents this his bill against the Alaska-Tread- l Gold Mining Company, a corporation duly incorporated under i by virtue of the laws of the State of Minnesota, and doing iness in the district of Alaska, on Douglas island, Alaska; and reupon your orator avers and says:

1.

That the said Alaska-Treadwell Gold Mining Company is a min- corporation incorporated under and pursuant to the laws of the te of Minnesota, and is engaged in mining and milling ore in district of Alaska, on Douglas island, Alaska, and has an office l agent in the district of Alaska, on the said Douglas island, to , one J. P. Corbus, who has the general supervision, control, and nagement of the affairs of said company in the said district of ska.

2.

That in the prosecution of said business of mining and reducing ore and extracting therefrom the gold therein contained the said company owns and operates five hundred forty stamps for the crushing and reduction of its said ore. l company also, under and pursuant to its said charter, owns a rcantile establishment and is engaged in the mercantile business large extent, to wit, about the sum of fifty thousand dollars in ume per annum, which said mercantile establishment is situated Douglas island, Alaska, and said business is being run and en- ed in in said district of Alaska.

3.

Your orator further says that the capital stock of said company he sum of five million dollars, divided into two hundred thou-

sand shares of the par value of twenty-five dollars per share, and your orator is the owner of one hundred shares of said capital stock, and was such owner on the date of the passage of the pretended tax law hereinafter mentioned; that the balance of said capital stock is owned and divided among a large number of persons and corporations, nearly all of whom are non-residents of the district of Alaska and are too numerous to all be made parties hereto, and this suit is brought by your orator in his own behalf and in behalf of all other stockholders of said company similarily situated to himself.

4.

The general control of the affairs of said company is entrusted to a board of directors who reside in San Francisco, State of California, and are non-residents of the district of Alaska; that the complete control and management of the affairs of said company in Alaska is under the supervision and control of its general superintendent and manager, J. P. Corbus.

5.

Your orator further says that the said company, acting by its said general superintendent in Alaska, which action is within the scope of the general authority and power conferred upon him, is

3 purposing and intending and, unless restrained by this honorable court, will apply to this honorable court for a license, and tender and pay to the clerk of this court for such license the sum of three dollars each upon said stamps, and the sum of two hundred and fifty dollars for a license to engage in said mercantile business for the year beginning July 1st, 1899, and ending June 30th, 1900, together with a clerk's fee of five dollars for issuing said license, making in all the sum of eighteen hundred and seventy-five dollars, which said payment and expenditure of the moneys of said company said company is purposing and intending to make under and pursuant to the provisions of chapter 44 of the act of March 3rd, 1899, of the Congress of the United States, entitled "An act to define and punish crimes in the district of Alaska and to provide a code of criminal procedure for said district."

6.

Your orator further shows and charges that the provisions of said act requiring the payment of said tax of three dollars per stamp per year by said company, and the sum of two hundred and fifty dollars per annum for said mercantile establishment, *is* contrary to the Constitution of the United States and null and void and of no force and effect, for the reason that said tax is not apportioned according to the rights of the *pu*population of the citizens of the United States throughout the United States, and for the further reason that said tax is not uniform throughout the United States, but is a tax for national purposes solely upon the citizens of the United States residing and doing business in the district of Alaska. Your orator further shows that said tax is exorbitant in its provisions, and so

uncertain and indefinite in its terms as to said mercantile establishment that it is impossible, without paying the maximum amount of tax therein laid upon such mercantile establishments, to certainly avoid the pains and penalties by said act attempted to be imposed, and if said act is complied with, it will result in the taking of the property of your orator and the others in whose behalf he brings this suit, for public purposes, and without adequate compensation
4 or any compensation therefor, and without due process of law. And your orator further says that such tax so required as a condition precedent to authorize the engaging in the business aforesaid is void and of no force or effect because forbidden especially by the first clause of section eight of article one of the Constitution of the United States, by the fourth clause of section nine of article one of said Constitution, and by the sixth clause of section nine of article one of said Constitution. Your orator further shows that said pretended act of Congress, so far as it attempts to lay and collect the said tax, is contrary to and forbidden by the fifth amendment to the Constitution of the United States, in that it deprives your orator and other persons similarly situated of their property without due process of law, and taxes private property for public uses without just compensation or without any compensation whatsoever, and is also forbidden by and is contrary to the first section of the 14th amendment to the Constitution of the United States.

7.

Your orator further shows that said business of quartz mining and operating a quartz mill and mercantile establishment are lawful and legitimate business enterprises which citizens of the United States and Alaska are entitled, under said Constitution, to pursue with the same privileges and immunities as citizens of the United States residing elsewhere.

8.

Your orator further shows that this suit is not a collusive one, brought to confer jurisdiction of the case upon this court, of which it would not otherwise have cognizance; that your orator has not been able, because of the great distance at which the directors of said company reside, to request them to refuse to pay said tax and to apply for said license, but has made such request of the officers or agents of said company controlling its business in Alaska, but they have failed and refused & *refused* not to make such application and pay such tax, for the reason that, though they doubt the constitution-
5 ality of said law, the pains and penalties imposed by said act for the omission so to do are so severe that said company and its said officers and agents fear, and have reason to fear, the great loss and injury in defending prosecution that might be brought against it for the failure to comply with said law; that they deem it better to submit to the illegal tax than to incur the consequences of the failure to comply with it; that your orator is advised that there is no procedure provided by law whereby said company could test the validity of said law and the constitutionality of said tax

without incurring the pains and penalties therein provided for the violation thereof, inasmuch as the said act requires the voluntary payment of the tax imposed under a penalty of heavy forfeiture and fines for the failure to make such voluntary payment; that the said company, in view of the foregoing, has refused and still refuses and intends omitting to comply with complainant's demand to refuse to pay said tax, and has resolved and determined and intends to comply with all and singular the provisions of said chapter 44 of said act of Congress, and to pay said tax upon its stamps and upon its said mercantile establishment, amounting to the said sum of eighteen hundred and seventy-five dollars for the said year, and to continue the payment of a like or greater sum for each year hereafter.

9.

Your orator further shows that if said company and its officers, as they have proposed and declared their intention to do, shall pay said tax the assets of the said company will be thereby diminished and lessened, as well as the dividends to be declared upon the stock thereof, and the value of the shares of said company, including the shares owned by your orator and all others in whose behalf this suit is brought; and your orator further shows that this suit involves more than the sum of five thousand dollars; that unless the company should comply with said act or this court grant the relief herein prayed for the said company would be exposed to a multiplicity of suits and prosecutions for the violation of said act,
6 and would be put to great expense and suffer irreparable injury in defending said suits and avoiding the fines and forfeitures provided by the said act, and its assets and the value of its shares would be thereby greatly lessened, to the great and irreparable injury and damage to your orator and other shareholders in said company.

10.

Your orator further shows that this is a suit of a civil nature in equity and arises under the Constitution and the laws of the United States and draws in question the validity of an act of Congress and the authority exercised under the United States, and that your orator has no plain, speedy, and adequate remedy at law.

Wherefore your orator prays:

First. That it may please your honor to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court, directed to the said Alaska-Treadwell Gold Mining Company, commanding it, on a certain day and under a severe penalty under the said writ, to be answered by and appear before your honor in this honorable court, and then and there full, true, and perfect answer to make of all and singular the premises, and further stand, perform, and do such further orders and directions and decree as your honor shall deem meet and shall be agreeable to equity and good conscience.

Second. That said provisions of chapter 44 of the act of Congress of March 3rd, 1899, requiring the said company to apply for a

license and pay the said tax, as a condition precedent to engaging in its said business, be declared contrary to the provisions of the Constitution of the United States and null and void.

Third. That this court issue its most gracious writ of injunction, restraining the said company, its officers, agents, and em-
7 ployees, from applying for said license and paying said tax.

Fourth. That if the court shall deem it proper until the final determination and hearing of this cause that it make such order or orders as it may deem proper whereby the said sum necessary in payment of said tax may be paid by said company into the register of the court to abide the final determination of this action and the adjudication of the validity of said statute.

Fifth. And your orator further prays for such other and further relief as in equity and good conscience it may show itself entitled —.

MALONY & COBB,
Solicitors for Complainant.

UNITED STATES OF AMERICA, } ss:
District of Alaska, }

A. W. Corbus, being duly sworn, deposes and says that he is the complainant in the within-entitled action; that he has read the above and foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

A. W. CORBUS.

Subscribed and sworn to before me this 17th day of July, 1899.

[SEAL.]

J. H. COBB,
Notary Public in & for Alaska.

Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* Alaska-Treadwell Gold Mining Co., defendant. Bill of complaint. Filed Jul- 17, 1899. Albert D. Elliot, clerk. Malony & Cobb, solicitors for pl'ff. (Original.)

8 On July 17th, 1899, the complainant filed his precipe for subpœna as follows, to wit:

In the United States District Court in and for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY.

Albert D. Elliot, Esq., clerk of the district court of the United States for the district of Alaska:

You will please issue a subpœna to the defendant, The Alaska-Treadwell Gold Mining Company, in the above-entitled cause, re-

turnable on or before twenty days of the date of the service of said subpœna.

Juneau, Alaska, July 17, 1899.

MALONY & COBB,
Solicitors for Complainant, Juneau, Alaska.

Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* Alaska-Treadwell Gold Mining Co., defendant. Precipe for subpœna. Filed Jul- 17, 1899. Albert D. Elliot, clerk. Malony & Cobb, attorneys for complainant; office, Juneau, Alaska.

9 And on the same day the complainant filed and presented his motion for a restraining order, which is in words and figures as follows, to wit:

In the United States District Court in and for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY.

Now comes the plaintiff in the above cause and moves the court to issue a restraining order or temporary injunction upon the hearing of this cause, and for grounds therefor shows that the defendant is purposing and intending and, unless this order issues, will make its application for a license, as set up in the complaint herein, and pay the money therefor specified to the clerk of this court, and the injuries set up and complained of in said bill of complaint will have already occurred and plaintiff's rights will be permanently lost if such payment is made.

This motion is based upon the sworn complaint herein filed.

MALONY & COBB,
Solicitors for Plaintiff.

Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* Alaska-Treadwell Gold Mining Company, defendant. Motion. Filed Jul- 17, 1899. Albert D. Elliot, clerk. Malony & Cobb, solicitors for plaintiff.

10 And afterwards, on the 17th day of July, 1899, the court made and entered the following order, to wit:

In the United States District Court in and for the District of Alaska.

A. W. CORBUS,
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY.

On this 17th day of July, 1899, came on to be heard the motion of plaintiff in the above cause for a restraining order restraining the defendant from applying for and voluntarily paying the license

ax of three dollars per stamp upon 540 stamps in its said mills, nd the license tax of two hundred and fifty dollars upon its mer- antile establishment, the same property set up in the bill of com- laint herein filed; and the court having considered said bill of omplaint, together with said motion, and being fully advised in the remises:

It is ordered that defendant be restrained from paying the license ees mentioned in said bill upon such application, but be allowed to ay said money into the registry of the court, pending the hearing nd final determination of the rights of the parties herein, and that pon said payment into the registry of the court in this cause any license applied for by the defendant be issued by the clerk of the court to the defendant, authorizing it to engage in and pursue the business specified in said license, the same to all intents and pur- poses as if said money had been paid upon said application.

It is further ordered that a copy of the complaint, motion, and other proceedings herein be served upon the United States district attorney in and for the district of Alaska, and that he be given leave to appear and defend this cause in behalf of the United States.

Done in open court the day and date above written.

CHARLES S. JOHNSON, *Judge*.

11 Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* Alaska-Treadwell Gold Mining Company, defendant. Order. Filed Jul- 17, 1899. Albert D. Elliot, clerk. Malony & Cobb, solicitors for plaintiff.

And afterwards, on the 17th day of July, 1899, a subpœna was issued, which, with the return thereon, was in words and figures as follows:

In the United States District Court in and for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY.

The President of the United States of America to the Alaska-Tread- well Gold Mining Company, Greeting:

You are hereby commanded that you be and appear in the said district court of the United States aforesaid, at the court-room, in Sitka, on or before twenty days of the date of the service hereof upon you, then and there to answer a bill of complaint exhibited against you in said court by A. W. Corbus, who is a citizen of the United States residing in Alaska, and to do and receive that the said court shall have considered in that behalf; and this you are not to omit, under a penalty of two hundred and fifty dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said district

court, this the 17th day of July, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third.

[SEAL.] ALBERT D. ELLIOT, *Clerk.*

You are hereby commanded to enter your appearance in the above suit on or before the twentieth day from the date of the service of the above subpœna upon you, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso.*

ALBERT D. ELLIOT, *Clerk.*

12 I hereby certify that the within writ of subpœna came to hand on the 19th day of July, 1899, and was executed on the 19th day of July, 1899, by serving the same on The Alaska Treadwell Gold Mining Company, the within-named defendant, by delivering to J. P. Corbus in person, the general manager and superintendent of said company, a true copy of said writ, together with the accompanying certified copy of the original bill of complaint in said cause.

I further certify that at the same time I served the said defendant with the restraining order made in said cause, by delivering to the said J. P. Corbus a true copy of said restraining order, certified to as such by the clerk under his hand and the seal of the court.

JAMES M. SHOUP,
Marshal for Alaska.
By JOHN F. McELHENY, *Deputy.*

Fees: Serving subpœna	2.00
" " restraining order	2.00
Mileage	.60
Total	4.60

Paid by plaintiff's attorney.

Endorsed: No. 976. In the United States district court for the district of Alaska. A. W. Corbus, plaintiff, *vs.* Alaska-Treadwell Gold Mining Company, defendant. Subpœna. Returned and filed Jul- 31, 1899. Albert D. Elliot, clerk. Malony & Cobb, attorney- for plaintiff.

And afterwards, on the 15th day of November, 1899, the defendant filed his demurrer, which is in words and figures as follows, to wit:

13 In the United States District Court in and for the District of Alaska.

A. W. CORBUS, Plaintiff,
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY, Defendant. } In Equity.

The Demurrer of the Defendant, The Alaska-Treadwell Gold Mining Company, to the Bill of Complaint of the Plaintiff, A. W. Corbus.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the plaintiff's said bill of complaint to be true in such manner or form as the same are therein set forth and alleged, doth demur thereto and for cause of demurrer saith that the said plaintiff hath not in and by the said bill made or stated *a* such case as entitleth him to any relief thereby sought and prayed for from or against this defendant.

Therefore, and for other good causes of demurrer appearing on the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether *he* shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its costs and charges in this behalf most reasonably sustained.

M. E. McENANY,
Solicitors for Defendant.

UNITED STATES OF AMERICA, *District of Alaska,* } *ss.:*

J. P. Corbus makes solemn oath and says that he is the superintendent and general manager of the above-named defendant, The Alaska Treadwell Gold Mining Company, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

J. P. CORBUS.

Subscribed and sworn to before me this 15th day of November, 1899.

[L. S.] M. GRINNELL,
Notary Public for Alaska at Juneau.

14 I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

——,
Counsel for Defendant.

Service of the above and foregoing demurrer is admitted this Nov. 15th, 1899.

MALONY & COBB,
Solicitors for Pl'ff.

Endorsed: No. 976. In the U. S. district court for the district of Alaska. A. W. Corbus *vs.* Alaska Treadwell Gold Mining Co. Demurrer. Filed Nov. 15, 1899. Albert D. Elliot, clerk. M. E. McEnany, att'y for def't.

And afterwards, said case coming on to be heard upon said demurrer, the court rendered the following judgment, to wit:

In the District Court of the United States for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA TREADWELL GOLD MINING COMPANY. } No. —.

JOHN W. ROBERTS
vs.
C. F. MEYERS ET AL. } No. —.

CHARLES STEWART
vs.
THE WASHINGTON & ALASKA STEAMSHIP CO. } No. —.

And protests by—
The Alaska Steamship Co.
The Pacific Coast Co.
The Pacific Coast Steamship Co.
The Alaska Packers' Association.
The Pacific Steam Whaling Co.

Decree.

The above-mentioned suits and protests came on regularly to be heard at the adjourned November, 1899, term of this court at Juneau, in said district. By consent of counsel all of said suits and matters were heard and argued together and at one time. All and each of said suits and protests were argued by counsel, and therefore, the court being fully advised, and after due consideration thereupon, it is ordered, adjudged, and decreed by the court that in the cases of A. W. Corbus *vs.* The Alaska Treadwell Gold Mining Co., John W. Roberts *vs.* C. F. Meyers *et al.*, and Charles
15 Stewart *vs.* The Washington & Alaska Steamship Co. and each of them the demurrers are sustained, and that the bills in said cases and each of them be, and the same are hereby, dismissed with costs in each case against the plaintiff, to be taxed by the clerk, and in each of said suits in which the defendants have deposited with the clerk of the court a sum equal to the amount required by law for a license to conduct the business in which said defendant is engaged the clerk of this court is hereby directed to issue such license and cover said sum or sums of money into the Treasury of the United States, unless an appeal be taken within 60 days.

In the matter of the protests of the Alaska Steamship Co., the

Pacific Coast Co., the Pacific Coast Steamship Co. (3), the Pacific Steam Whaling Co., the Alaska Packers' Association, where the same can be construed into an application for a license under the law for conducting the several businesses therein described, the clerk is directed to issue such license in each instance, and turn said sums of money into the Treasury of the United States. So far as said protests seek relief against the payment of a license on the several businesses therein described, the same is overruled, denied, and ignored in each case of protest.

This order and decree will be entered by the clerk in each suit and in the matter of each protest.

CHARLES S. JOHNSON,
U. S. District Judge.

Endorsed: No. 976. A. W. Corbus *vs.* Alaska Treadwell G. M. Co. No. 978. John W. Roberts *vs.* C. F. Meyers. No. 1048. Charles Stewart *vs.* The Washington & Alaska S. S. Co. Order and decree. Filed Jan. 2, 1900. Albert D. Elliot, clerk.

The court also filed an opinion in said cause, which is as follows, to wit:

16 In the District Court of the United States for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING CO.

JOHN W. ROBERTS
vs.
C. F. MEYERS ET AL.

CHARLES STEWART
vs.
THE WASHINGTON AND ALASKA STEAMSHIP CO.

And protests by—
The Alaska Steamship Co.
The Pacific Coast Co.
The Pacific Coast Steamship Co. (3).
The Pacific Steam Whaling Co.
The Alaska Packers' Association.

1. Injunction.—An injunction by one stockholder against the corporation to restrain the latter from applying for a license and paying the tax or fee imposed by law for conducting a business upon which the Congress has imposed such tax will not lie.
2. Practice.—Equity will not interfere where the parties have a plain and adequate remedy at law.

3. Same.—To induce a court of equity to take jurisdiction of a suit on the ground that a multiplicity of suits is threatened and irreparable injury thereby about to be sustained the facts must be so plead that the court can reasonably infer that such allegations are true.

4. Protests.—A mere protest against the payment of a license tax on the ground that the law seeking to impose the same is unconstitutional will not give the court jurisdiction to try and determine the constitutionality of the law.

Maloney & Cobb for Corbus.
M. E. McEnany for Alaska-Treadwell G. M. Co.
John R. Winn for Roberts.
F. D. Kelsey for Meyers *et al.*
John G. Heid for Stewart.
Lyons & Lyons for Washington & Alaska Steamship Co.
John R. Winn for the P. C. Co., P. C. S. S. Co., and P. S. W. Co.
Arthur K. Delaney for Alaska Packers' Association.
R. W. Jennings for the Alaska Steamship Co.
R. A. Freidrich, U. S. attorney, *amicus curiæ*.

17 JOHNSON, *District Judge:*

The following cases were at one and the same time argued and submitted to the court for decision and determination: A. W. Corbus *vs.* The Alaska-Treadwell Gold Mining Co., John W. Roberts *vs.* C. F. Meyers *et al.*, Charles Stewart *vs.* The Washington and Alaska Steamship Co., and protests against the payment of the license tax by the Alaska Steamship Co., the Pacific Coast Co., the Pacific Coast Steamship Co., the Pacific Steam Whaling Co., and the Alaska Packers' Association.

The object and purpose of each suit and each protest being the same—that is, to determine the constitutionality of the provisions of chapter 44 of the act of Congress of March 3rd, 1899, entitled "An act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for said district"—they may all be disposed of together.

As to the forms of action, they may be divided into two classes. The first three are suits in equity, wherein a stockholder of the defendant corporation or copartner of the defendant copartnership seeks to enjoin the corporation or copartnership from applying for a license or paying the license fee or tax required by said act to be paid as a condition precedent to conducting their respective lines of business. The remaining cases are simple protests against paying the license tax imposed by law, principally on the ground that the same is unconstitutional, and praying that they may pay the amount of the license tax into the registry of the court, there to be held until the final action of the court on their protests. In each and all of the cases the license fee or tax has been paid to the clerk of the court, there to remain by order of the court until the final determination of these suits and protests.

In the case of Corbus *vs.* The Alaska-Treadwell Gold Mining Co.

the plaintiff seeks to enjoin the defendant corporation from paying the license tax imposed for operating certain quartz stamp mills and conducting a mercantile establishment. In Stewart *vs.* The Washington and Alaska Steamship Co., the injunction is
18 sought for the purpose of restraining the payment of the license for an ocean and coastwise vessel doing local business for hire, plying in Alaskan waters, the property of the defendant corporation. Roberts *vs.* Meyer *et al.* is identical with the last-named case except that the owner of the vessel in question is a company instead of a corporation, one member of which seeks to enjoin the other members. The protests of the Alaska Steamship Co., the Pacific Coast Co., and the Pacific Coast Steamship Co. are against the payment of licenses on steamers and wharves, while the protests of the Pacific Steam Whaling Co. and the Alaska Packers' Association are directed against the license imposed for operating steamboats and canning and salting salmon in Alaska.

To each of the three bills a demurrer to the equity thereof was interposed by defendants. The attorneys for the defendants, however, made no arguments and filed no briefs in support of their respective demurrers. Copies of the bills having been served upon the district attorney, he asked and obtained leave of the court to appear as *amicus curiæ*, and in that capacity and disclaiming any intention to in any manner represent or bind the United States he denied that the court had any jurisdiction under any of the forms of action presented to hear and determine the cases upon their merits. He denied the right or power of the court to enjoin the defendants in any case from paying the license in question, and he also argued in support of the constitutionality of the law and offered a brief in support of both contentions.

It is necessary, then, to first ascertain whether the court has jurisdiction under the pleadings in any of these cases to try and determine the constitutionality of the law in question.

In the three equity suits the plaintiffs rely largely, if not wholly, upon the case of Pollock *vs.* Farmers' Loan and Trust Co., 157 U. S., 229, and 158 *id.*, 601. It is contended that the suits at bar are identical with the Pollock case, and that the Supreme Court having in that case decided that a stockholder might enjoin
19 a corporation from paying a tax alleged to be unconstitutional, that this court is bound thereby in these cases. If it be conceded that the cases are identical and that the decision in the Pollock case is entitled to the breadth of construction contended for by plaintiff's counsel, then it will not be denied that this court is bound thereby; but are the cases identical? We think not. An examination of the bills before us discloses the existence of corporations and a copartnership formed for the simple purpose, in the one instance of mining and milling ores for the precious metals therein contained, and in the other two cases for operating steamers in Alaskan waters as common carriers. It is not claimed that any trusts have been committed to the respective defendants, their only obligation and duty being to their stockholders; and the threatened multiplicity of suits is charged as "suits and prosecutions for the

violation of said act," and the irreparable injury threatened and complained of would be incurred by "defeinding said suits and avoiding the fines and forfeitures provided by said act." In Pollock *vs.* Farmers' Loan and Trust Co. the bill alleged "that under and by virtue of the powers conferred upon the company it had from time to time taken and executed and was holding and executing numerous trusts committed to the company by many persons, copartnerships, unincorporated associations, and corporations by grant, assignment, devise, and bequest and by orders of various courts, and that the company now hold as trustee for many minors, individuals, copartnerships, associations, and corporations resident in the United States and elsewhere many parcels of real estate situated in the various States of the United States and amounting, in the aggregate, to a value exceeding five millions of dollars, the rents and income of which real estate collected and received by said defendant in its fiduciary capacity annually exceeded the sum of two hundred thousand dollars." The bill further shows "that voluntary compliance with the income-tax provisions would expose the company to a multiplicity of suits, not only by and on behalf of its numerous shareholders, but by and on behalf of numerous minors and others for whom it acts in a fiduciary capacity."

Other radical differences appear between the bills under consideration and that in Pollock *vs.* Farmer's Loan and Trust Co., but these are sufficient of themselves to place the two on an entirely different footing. Indeed, it was because of these allegations in the bill in the Pollock case, and which are not found in the bills before us, that the Supreme Court determined it had jurisdiction in that case. The language of the syllabus, which embodies the judgment of the court upon that point, reads as follows: "Such a bill being filed by a stockholder to prevent a trust company from voluntarily making returns for the imposition and payment of a tax claimed to be unconstitutional, and on the further ground of threatened multiplicity of suits and irreparable injury, * * * the court will proceed to judgment on the merits."

A mere allegation in the bill that a multiplicity of suits is threatened is not sufficient to induce a court of equity to take jurisdiction of the suit. The facts must be pleaded in such manner that the court can reasonably infer that such danger is threatened and such suits liable to be brought. This is not only sound in principle, but is sustained by the authorities. Schulenberg-Boeckler Lumber Co. *et al. vs.* Town of Hayward *et al.*, 20 Fed. Rep., 422. An examination of the bills before us in the light of the law governing the matters complained of discloses the fact that no such multiplicity of suits and no such irreparable injury as is contemplated in law or in equity is threatened or is possible.

But we do not concede that even in the Pollock case the Supreme Court holds that the plaintiff, as a matter of course, had the right to enjoin the defendant from paying the tax alleged to be unconstitutional. The Chief Justice, in passing upon this feature of the case, uses this language: "The objection of adequate remedy at law was not raised below, nor is it now raised by appel-ees, if it could be en-

tertained at all at this stage of the proceedings, and so far as
21 it was within the power of the Government to do so the question of jurisdiction for the purposes of this case was explicitly waived on the argument." The court was induced to some extent, no doubt, to hear the case upon its merits on the ground of public policy; at least Assistant Attorney General Whitney was constrained to waive all objection to the form of action on that ground, as is evidenced by the following language used by him in his argument of the case:

"The method by which the questions are presented in the Pollock and Hyde cases was not chosen with the consent of the Government. The corporations have ample remedy at law, either by standing on the defensive or by paying the tax under protest and suing to recover the amount paid. Plaintiffs would be sufficiently protected by decree restraining the corporations from voluntary payment; yet the bills do not allege that the corporations intend to pay voluntarily. No injunction, it is believed, has ever been granted against the payment of a tax to the United States Government or against the execution of a law of the United States on the ground that the law was unconstitutional. It is believed that in no case can such an injunction properly be granted, and it is regarded as important not to break the chain of precedent against such relief. These objections, however, are not jurisdictional in the strictest sense. * * * In view of the great public interest aroused and of the fact that no cases in proper form are now pending, these objections are waived on behalf of the Government, so far as it is in the power of its officers to waive them."

It can avail nothing for me to here quote from the very able dissenting opinion of Justices White and Harlan on this branch of the Pollock case. Their opinion, with authorities cited, leads me to the conclusion that had the question of jurisdiction been raised in the court below and insisted upon in the Supreme Court, the case would not have been heard upon its merits. And in the cases at bar the district attorney, so far as he had the right to do so, the Government not being a party to the suits, raised not only the question of the jurisdiction of the court because the plaintiffs had a plain, speedy, and adequate remedy at law, but insisted that the suits were of a friendly nature, collusive in character, and brought for the sole purpose of conferring jurisdiction upon the court, to the end that the defendants might escape paying the license fee imposed by law; and when all the facts are taken together, as disclosed by the record, some color is lent to the latter contention. Take the case of Corbus *vs.*
The Treadwell Co.; the bill was filed July 17th, the subpœna
22 served July 19th, commanding the defendant to answer the bill within twenty days. No appearance was made by defendant, however, and no pleading filed until November 15th, nearly four months after the filing of the bill, and not until about the time the matter was called up for hearing, when a demurrer was interposed. Counsel for defendant did not contend for his demurrer, made no argument, and filed no brief in support of the same, and in the very nature of the case the interests of the plain-

tiff and defendant are identical. Then, if the object and purpose of the suit is solely to test the constitutionality of the law without first paying into the United States Treasury the amount of the license tax, and there can be no other object, and if the court will sustain the plaintiff and enjoin the defendant as prayed, how is the private citizen to avail himself of a similar remedy? Who shall enjoin him and save him from paying his tax until the constitutionality of the law is determined? And if he cannot avail himself of this manner of suit, why should corporations or copartnerships be permitted to do so? Why should not corporations and individuals have and be permitted to exercise identically the same legal rights and remedies under the law?

It is admitted in all the bills and protests now being considered that the respective plaintiffs have a plain remedy at law by resisting the enforcement of the statute in question, but they contend that the fines and penalties imposed are so severe they dare not pursue that course. When the Congress passed the law in question they also passed and made a part of this very chapter 11 the following provision, found in section 181:

"That in any case where a conviction occurs, except in a case of murder or rape, the court may, when in its opinion the facts and circumstances are such as to make the minimum penalty provided in this act manifestly too severe, impose a less penalty, either of fine or imprisonment, or both: Provided, that in any such case the court shall cause the reasons for its action to be set forth at large on the record in the case."

It would seem the Congress had in view the provisions in this very chapter, for the minimum penalty in all other criminal cases is extremely low, and while it is not a part of the record of this case, it is a fact well known to every attorney appearing in
23 these cases that the court has repeatedly exercised the power by that section vested in it and has imposed a minimum fine of but one dollar in many cases arising under the provisions of this chapter. In view of the existence of this law, the plaintiffs can have nothing to fear from the severe penalties imposed if they are acting in good faith and with an honest purpose to test the constitutionality of the law, intending if the same shall be sustained, to then comply with its provisions.

As to those persons appearing by protests only, it is the anomalous contention that the papers on file are both applications for and protests against the issuance of licenses—that is to say, they are applications for license if the court shall determine that the businesses engaged in by the plaintiffs respectively subject them to the payment of a tax; and they are protests on the ground that the several lines of business engaged in by protestants are not subject to license and taxation, principally because the law attempting to impose the tax is unconstitutional and void. It is further contended by them that in passing upon all applications for license under this law the court acts judicially, and therefore has the right to and must pass upon the constitutionality of the law itself. It is not necessary to determine whether in passing upon applications for license the

court acts judicially, for if we concede that it does so act, it is nevertheless perfectly clear that the petitioner can only allege in his petition those things required by the act itself to be set up, showing the applicant to be entitled to the license prayed for; and if extrinsic matter is pleaded, such as denying the constitutionality of the law itself, the court is not required, nor in our judgment permitted, to take judicial notice of such extrinsic matter. An officer authorized to issue marriage licenses may be said to act judicially in determining whether the facts set up by the applicant for such license entitles him to receive the same, but it would be hardly contended that the applicant could deny the constitutionality of the law governing such matters and require the officer to determine that question.

24 If this were a court of last resort, we might feel constrained to seek some means by which the constitutionality of the law might be passed upon. The issue should be settled at the earliest possible moment. But we are powerless to finally settle it, even if we would, and we do not believe the question is legally before us. The giving to every one who may feel himself aggrieved the right to enjoin payment of a tax imposed upon him by the Congress is fraught with so much danger, and it is so at variance with the policy of our Government and the decisions of our courts, that we do not feel warranted in seeking for reasons to justify the taking of jurisdiction in these cases, even if any could be found.

The demurrers to the three bills will be sustained; and as to the protests, in so far as they can be construed as an application for license for the respective businesses named, they will be sustained. The protests will be ignored, and unless an appeal shall be taken from the decree rendered in conformity with this opinion within the time prescribed by law, the clerk will be directed and ordered to pay into the United States Treasury the several sums of money paid into the registry of this court by the respective complainants and protestants. Let a decree be entered in conformity herewith.

Endorsed: No. 976. Corbus *vs.* Treadwell Co. *et al.* Opinion of court. Filed December 30th, 1899. Albert D. Elliot, clerk.

25 And afterwards, on February 8th, 1900, the complainant presented his petition for an allowance of an appeal in said cause, which is in words and figures as follows, to wit:

In the United States District Court for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY ET AL.

To the Honorable Charles S. Johnson, judge of the United States district court in and for the district of Alaska:

The above-named complainant, conceiving himself aggrieved by the order of the court made and entered by the above-named court in the above-entitled cause under date of Jan'y 2nd, 1900, wherein

and whereby it was and is ordered, directed, and decreed that this cause be dismissed, that a temporary injunction and restraining order heretofore granted be dissolved, set aside, and held for naught, and that the fund now in the hands of the clerk, being the moneys of the defendant The Alaska-Treadwell Gold Mining Company, be paid over by the clerk to the United States Treasury, does hereby appeal to the United States Supreme Court from said order and decree, and particularly from that part thereof dismissing plaintiff's bill and directing said fund in the court to be paid by the clerk into the United States Treasury, for the reason set forth in the assignment of error which is filed herein, and complainant prays that this his petition for said appeal may be allowed, that the amount of the supersedeas bond be fixed by the court, and that the transcript of the records, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States Supreme Court, at Washington, D. C.

Dated February 7th, 1900.

MALONY & COBB,
Solicitors for A. W. Corbus, Complainant.

26 Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* The Alaska-Treadwell Gold Mining Co. Petition for appeal. Filed Feb. 8, 1900. Albert D. Elliot, clerk. Malony & Cobb, solicitors for plaintiff.

And afterwards, on said Feb'y 7th, the court made the following order, to wit:

In the United States District Court for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY ET AL.

On motion of Messrs. Malony & Cobb, solicitors for complainant, it is ordered that the appeal to the Supreme Court of the United States from the final decree heretofore filed and entered herein be, and the same hereby is, allowed, and that a certified transcript of the record and all proceedings herein be forthwith transmitted to the said United States Supreme Court, at Washington, D. C.

It is further ordered that the bond on appeal be fixed at the sum of $2,000.00, the same to act as a supersedeas bond, and also as a bond in costs and damages on appeal, and that service of all proceedings be had upon the U. S. dist. att'y for Alaska, as well as upon respondent.

Dated February 7th, 1900.

CHARLES S. JOHNSON,
District Judge in and for the District of Alaska.

Endorsed: No. 976. A. W. Corbus *vs.* Alaska-Treadwell Gold Mining Company. Order granting appeal. Filed Feb. 8, 1900. Albert D. Elliot, clerk. Malony & Cobb, att'ys for plaintiff.

27 And afterwards, on Feb. 8th, the citation in form was duly issued in said cause, which is in words and figures as follows, to wit:

In the United States District Court for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Alaska-Treadwell Gold Mining Company, the United States of America and to R. A. Freidrich, United States district attorney for the district of Alaska:

You are hereby cited and admonished to be and appear in the United States Supreme Court, to be held at the city of Washington, District of Columbia, within sixty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the district court in and for the district of Alaska, wherein A. W. Corbus is appellant and you are appellee-, to show cause, if any there be, why a judgment in the said appeal mentioned should not be corrected and speedy justice should — be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 8th day of February, A. D. 1900, and of the Independence of the United States the one hundred and twenty-fourth.

CHARLES S. JOHNSON, *Judge.*

Service of the above and foregoing citation and the receipt of a copy thereof is admitted this the 8th day of February, 1900

M. E. McENANY,
Solicitors for the Alaska-Treadwell Gold M. Co., Appellee and Respondent in the Lower Court.
ROBERT A. FREIDRICH,
United States District Attorney for Alaska.

28 Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* The Alaska-Treadwell Gold Mining Company. Citation. Filed Feb. 8, 1900. Albert D. Elliot, clerk. Maloney & Cobb, solicitors for plaintiff.

And afterwards, on said day, the plaintiff filed his assignment of errors in said cause, which is in words and figures as follows, to wit:

In the United States District Court for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY ET AL.

Comes now the complainant and files the following assignment of errors, upon which he will rely upon his appeal from the decree made by this honorable court on the 2nd day of Jan'y, 1900, in the above-entitled cause:

First. That the court erred in sustaining the demurrer interposed by the defendant to the bill of complaint of plaintiff herein, and holding that the plaintiff had a full, complete, and adequate remedy at law.

Second. That the court erred in dismissing the complainant's bill without considering the case upon its merits.

Third. That the court erred in decreeing that the fund on deposit in the registry of the court be paid into the United States Treasury.

Fourth. That the said court erred in not decreeing that the complainant was entitled to the relief prayed for, and that the act of Congress pretending to impose a tax upon the business of the defendant company was unconstitutional and void.

Wherefore the appellant, complainant in the court below, prays that the judgment and decree of the said court be reversed, and, in order that the foregoing assignment of errors may be a part of the record, the complainant presents the same to the court and
29 prays that such disposition may be made thereof as in accordance with law and the statutes of the United States in such case made and provided.

All of which is respectfully submitted.

MALONY & COBB,
Solicitors for Complainant.

Service of the above & foregoing assignment of errors is hereby admitted to have been duly & legally made within the district of Alaska on this 8th day of February, 1900.

ROBT A. FREIDRICH,
U. S. Dist. Att'y for Dist. of Alaska.

Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* The Alaska-Treadwell Gold Mining Company. Assignment of errors. Filed Feb. 8, 1900. Albert D. Elliot, clerk. Malony & Cobb, solicitors for plaintiff.

And afterwards the complainant filed his bond on appeal, which is in words and figures as follows, to wit:

In the United States District Court for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY ET AL.

Know all men by these presents that we, A. W. Corbus, as principal, and B. M. Behrends, as surety, are held and firmly bound unto The Alaska-Treadwell Gold Mining Company, defendant above named, and unto the United States of America in the sum of $2,000.00, two thousand dollars, to be paid to the said obligees, their successors and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated 10th day of February, 1900.

Whereas the above-named complainant, A. W. Corbus, has taken an appeal to the Supreme Court of the United States to reverse the decree in the above-entitled cause in the district court of the United States in and for the district of Alaska:

Now, therefore, the condition of this obligation is such that if the above-named complainant, A. W. Corbus, shall prosecute his said appeal to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; other-
30 wise to remain in full force and virtue.

A. W. CORBUS.
B. M. BEHRENDS.

The above and foregoing bond is hereby approved this 15th day of February, 1900.

CHARLES S. JOHNSON,
District Judge of Alaska.

Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, vs. The Alaska-Treadwell Gold Mining Company. Bond. Malony & Cobb, solicitors for plaintiff. Filed Feb. 15, 1900. Albert D. Elliot, clerk.

31 And afterwards the following order was made and entered of record, to wit:

In the United States District Court for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY.

This cause coming on to be heard upon the motion of the plaintiff, by his solicitors, Malony & Cobb, for an order extending the time within which to file the transcript herein in the Supreme Court, because it is the opinion of the court that the said transcript cannot be made up and transmitted to Washington in the time

allowed by law, it is ordered that said time within which said transcript shall be filed *by* the Supreme Court be, and the same is hereby, extended to and including the 8th day of May, A. D. 1900.

Done in open court this the 22 day of March, 1900.

CHARLES S. JOHNSON, *Judge.*

"Endorsed:" No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* Alaska Treadwell Gold Mining Co. Order extending time to file transcript. Filed March 22, 1900. Albert D. Elliot, clerk.

32 UNITED STATES OF AMERICA, } *ss:*
District of Alaska, }

I, Albert D. Elliot, clerk of the United States district court in and for the district of Alaska, do hereby certify that the above and foregoing and hereto annexed 32 pages are a full, true, and correct transcript of the records and files of all the proceedings in the therein-mentioned case of A. W. Corbus *vs.* The Alaska-Treadwell Gold Mining Company, and the same is made up and certified in accordance with the order of the court allowing an appeal in said cause and pursuant thereto.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court of Alaska this 2nd day of April, 1900.

[Seal United States District Court, Alaska.]

ALBERT D. ELLIOT, *Clerk.*

33 In the United States District Court for the District of Alaska.

A. W. CORBUS }
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY. }

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Alaska Treadwell Gold Mining Company, the United States of America, and to R. A. Freidrich, United States district attorney for the district of Alaska:

You are hereby cited and admonished to be and appear in the United States Supreme Court, to be held at the city of Washington, District of Columbia, within sixty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the district court in and for the district of Alaska, wherein A. W. Corbus is appellant and you are appellee, to show cause, if any there be, why a judgment in the said appeal mentioned should not be corrected and speedy justice should — be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 8th day of February, A. D. 1900, and of the Independence of the United States the one hundred and twenty-fourth.

CHARLES S. JOHNSON, *Judge.*

Service of the above and foregoing citation and the receipt of a copy thereof is admitted this the 8th day of February, 1900.

M. E. McENANY,
Solicitors for the Alaska-Treadwell Gold M. Co., Appellee and Respondent in the Lower Court.
ROBT A. FREIDRICH,
United States District Attorney for Alaska.

34 [Endorsed:] No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* The Alaska-Treadwell Gold Mining Co. Citation. Filed Feb. 8, 1900. Albert D. Elliot, clerk. Malony & Cobb, solicitors for plaintiff: offices at Juneau, Alaska.

35 [Endorsed:] No. 976. A. W. Corbus *vs.* The Alaska-Treadwell Gold Mining Company. Transcript on appeal.

Endorsed on cover: File No., 17,739. Alaska D. C. U. S. Term No., 625. A. W. Corbus, appellant, *vs.* The Alaska Treadwell Gold Mining Company. Filed May 5th, 1900.